



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3644 FAX (603) 271-2181



September 3, 2003

Postsecondary Education
Attn: Scott Bienvence
5 Institute Drive
Concord, New Hampshire 03301

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 03-010**

**RE: NASHUA, HOLT BROOK, EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #A-0110336) (DES #199312058)**

Dear Mr. Bienvence:

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at 505 Amherst Street, Nashua, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On April 23, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on November 3, 2003. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that monthly measurement of water level in inches was not conducted and the monthly inventory was not signed by the owner certifying the accuracy of the records for the 12,000-gallon #2 fuel oil UST (Tank 5). One month of inventory monitoring results for Tank 5 showing the water level and a signature certifying the accuracy of the records must be provided to DES.

2 Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection device for the 1,000-gallon gasoline UST (tank 7) was not maintained in good working order. The overfill protection device for Tank 7 must be replaced and documentation of the installation must be provided to DES.

3 Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested annually for proper operation in accordance with manufacturer's requirements. DES has determined that the leak monitoring equipment was not tested annually, that the leak monitor for the 1,000-gallon gasoline (Tank 7) was not maintained in working condition, and that the leak monitor for the 10,000-gallon #2 fuel oil (Tank 8) was not continuously performing. The annual leak monitor test must be performed, the sensor for Tank 7 must be repaired and tested, and the water must be removed from the interstitial space and the interstitial space tested for Tank 8. Leak monitor test results, replacement or maintenance results for Tanks 7 and 8 or indication that Tank 8 has been temporarily closed must be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0110336) shall be revoked effective **November 3, 2003**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the

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hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

 **COPY**

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 2276

cc: Michael P. Nolin, Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Nashua

***** RETURN THIS PAGE ONLY *****

APPEARANCE

I desire a hearing in accordance with Env-Wm 1401 regarding the Permit.

Name: _____ Title: _____
(Please type or print legibly) (Please type or print legibly)

Signature Date: _____

WAIVER OF HEARING

I certify that I understand my right to a hearing regarding the revocation of the Permit and that I hereby waive those rights.

Name: _____ Title: _____
(Please type or print legibly) (Please type or print legibly)

Signature Date: _____

Please return to:

Department of Environmental Services Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095